

AMENDED IN SENATE JUNE 23, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1320

Introduced by Assembly Member Allen
(Coauthors: Assembly Members Furutani and Ma)

February 18, 2011

An act to amend ~~Sections 20814 and~~ *Section* 20816 of, and to add Sections 20814.5 and 31453.7 to, the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1320, as amended, Allen. Public employees' retirement: employer contribution rates.

(1) The Public Employees' Retirement Law prescribes employer contribution rates to the retirement fund for the Public Employees' Retirement System (*PERS*). Existing law requires that the state's contribution rate be adjusted in the Budget Act based on rates established by the system's actuary. Existing law provides that the employer contribution rate for an employer other than the state shall be determined on an annual basis by the actuary, as specified. Existing law requires that the rate at which a public employer contributes to the system shall be based upon its experience, and not the experience of public agency employers generally. Existing law requires that all assets of an employer in the system be used to determine the employer's contribution rate.

This bill, on and after January 1, 2013, would establish in the retirement fund for each employer a Taxpayer Adverse Risk Prevention Account. The account would be an employer asset, but would not be

counted as an asset for the purpose of determining the employer's contribution rate. Deposits into the account would be made ~~with all or a portion of employer contributions~~ when the actuarial value of assets exceeds the ~~present value of benefits~~ *accrued liability*, as specified. The bill would provide that the assets of the account would be drawn upon to pay a portion of the employer contribution when the employer contribution rate is greater than the *employer* normal cost of benefits, as specified. *The bill would require the employer to make an additional contribution when the employer's contribution rate is less than the employer normal cost of benefits, as defined, and that additional contribution would be credited to the employer's Taxpayer Adverse Risk Prevention Account.* The bill would provide that the employer ~~contribution rate may be reduced, pursuant to a specified formula, would not be required to make that additional contribution~~ when the employer's Taxpayer Adverse Risk Prevention Account exceeds an amount equal to 50% of the employer's assets, exclusive of the assets in the Taxpayer Adverse Risk Prevention Account. The bill would permit assets in an account to be used for specified transfers and contributions authorized under existing law. The bill would provide that assets in an account would be invested ~~with other system assets~~ *according to investment strategies established by the Board of Administration of PERS.*

(2) The County Employees Retirement Law of 1937 authorizes the board of retirement to determine county or district contributions on the basis of a normal contribution rate, which is computed as a level percentage of compensation which, when applied to future compensation of the average new member entering the system, together with member contributions, is sufficient to provide for the payment of all prospective benefits of a member.

This bill, on and after January 1, 2013, would establish in each county or district's retirement fund a Taxpayer Adverse Risk Prevention Account. The account would be an employer asset, for that county or district, but would not be counted as an asset for the purpose of determining the employer's contribution rate. Deposits into the account would be made ~~with all or a portion of employer contributions~~ when the actuarial value of assets exceeds the ~~present value of benefits~~ *accrued liability*, as specified. The bill would provide that the assets of the account would be drawn upon to pay a portion of the employer contribution when the employer contribution rate is greater than the normal cost of benefits, as specified. *The bill would require the employer*

to make an additional contribution when the employer's contribution rate is less than the employer normal cost of benefits, as defined, and that additional contribution would be credited to the employer's Taxpayer Adverse Risk Prevention Account. The bill would provide that the employer contribution rate may be reduced, pursuant to a specified formula, would not be required to make that additional contribution when the employer's Taxpayer Adverse Risk Prevention Account exceeds an amount equal to 50% of the employer's assets, exclusive of the assets in a Taxpayer Adverse Risk Prevention Account. The bill would permit assets in an account to be used for other specified contributions. The bill would provide that assets in an account would be invested with other system's assets according to investment strategies established by the board of retirement.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 20814 of the Government Code is~~
2 ~~amended to read:~~
3 ~~20814. (a) Notwithstanding any other provision of law, the~~
4 ~~state's contribution under this chapter shall be adjusted from time~~
5 ~~to time in the annual Budget Act according to the following~~
6 ~~method. As part of the proposed budget submitted pursuant to~~
7 ~~Section 12 of Article IV of the California Constitution, the~~
8 ~~Governor shall include the contribution rates submitted by the~~
9 ~~actuary of the liability for benefits on account of employees of the~~
10 ~~state, as adjusted pursuant to Section 20814.5. The Legislature~~
11 ~~shall adopt the actuary's contribution rates and authorize the~~
12 ~~appropriation in the Budget Act.~~
13 ~~(b) The employer contribution rates for all other public~~
14 ~~employers under this system shall be determined on an annual~~
15 ~~basis by the actuary, adjusted pursuant to Section 20814.5, and~~
16 ~~shall be effective on the July 1 following notice of a change in~~
17 ~~rate.~~
18 ~~SEC. 2. Section 20814.5 is added to the Government Code, to~~
19 ~~read:~~
20 ~~20814.5. (a) For the purposes of this section, the following~~
21 ~~definitions apply:~~

1 ~~(1) “Actual employer contribution rate” means the actual rate~~
2 ~~to be paid by the employer as a result of adjustments made pursuant~~
3 ~~to subdivision (b) to the employer contribution rate by the actuary.~~

4 ~~(2) “Employer contribution rate” means a rate for payment of~~
5 ~~the total employer contribution, as determined by the actuary~~
6 ~~according to the most recently completed valuation of the total~~
7 ~~liability for the benefits on the account of the employees of the~~
8 ~~employer.~~

9 ~~(3) “Normal cost of benefits” means a rate for payment of~~
10 ~~normal cost, as determined by the actuary according to the most~~
11 ~~recently completed valuation.~~

12 ~~(b) Notwithstanding any other provision of law, the employer~~
13 ~~contribution rate shall be adjusted according to the following:~~

14 ~~(1) If the employer contribution rate is greater than the normal~~
15 ~~cost of benefits, then the actual employer contribution rate shall~~
16 ~~be a rate, not less than the normal cost of benefits, and sufficient,~~
17 ~~when combined with assets transferred from the Taxpayer Adverse~~
18 ~~Risk Prevention Account established pursuant to subdivision (c),~~
19 ~~to equal the employer contribution rate.~~

20 ~~(2) Except as provided in subdivision (d), if the employer~~
21 ~~contribution rate is less than the normal cost of benefits, the actual~~
22 ~~employer contribution rate shall be equal to the normal cost of~~
23 ~~benefits.~~

24 ~~(c) For the purposes of subdivision (b), a separate account shall~~
25 ~~be established for each employer in the retirement fund to be~~
26 ~~known as a Taxpayer Adverse Risk Prevention Account.~~

27 ~~(1) A Taxpayer Adverse Risk Prevention Account is an~~
28 ~~employer asset, but shall not be counted as part of employer assets~~
29 ~~for purposes of determining the employer contribution rate.~~

30 ~~(2) Deposits to a Taxpayer Adverse Risk Prevention Account~~
31 ~~shall be made with all or a portion of the actual employer~~
32 ~~contribution rate in excess of the employer contribution rate when~~
33 ~~the actuarial value of assets exceed the present value of benefits~~
34 ~~as determined by the chief actuary, according to the most recently~~
35 ~~completed annual valuation.~~

36 ~~(3) A Taxpayer Adverse Risk Prevention Account shall be drawn~~
37 ~~from to pay for that portion of the employer contribution rate that~~
38 ~~exceeds the actual employer contribution rate, pursuant to~~
39 ~~paragraph (1) of subdivision (b).~~

1 ~~(4) The funds in a Taxpayer Adverse Risk Prevention Account~~
2 ~~may be used to pay for employee contributions picked up by an~~
3 ~~employer pursuant to Section 414(h)(2) of the Internal Revenue~~
4 ~~Code (26 U.S.C. Sec. 414).~~

5 ~~(5) The funds in a Taxpayer Adverse Risk Prevention Account~~
6 ~~may be used to make asset transfers pursuant to Section 20816.~~

7 ~~(6) The funds in a Taxpayer Adverse Risk Prevention Account~~
8 ~~may be used to reduce any contributions authorized under Section~~
9 ~~20820.~~

10 ~~(7) The funds in Taxpayer Adverse Risk Prevention Accounts~~
11 ~~shall be invested with other assets of the system.~~

12 ~~(d) Notwithstanding paragraph (2) of subdivision (b), an actual~~
13 ~~employer contribution rate may be reduced below a rate equal to~~
14 ~~100 percent of the normal cost of benefits, as specified in paragraph~~
15 ~~(2) of subdivision (b), pursuant to a formula determined by the~~
16 ~~actuary when that employer's Taxpayer Adverse Risk Prevention~~
17 ~~Account exceeds an amount equal to 50 percent of the employer~~
18 ~~assets, other than the assets in the Taxpayer Adverse Risk~~
19 ~~Prevention Account. That reduction in the actual employer~~
20 ~~contribution rate shall be reevaluated annually by the actuary. The~~
21 ~~actual employer contribution rate may be increased when the excess~~
22 ~~of funds in the employer's Taxpayer Adverse Risk Prevention~~
23 ~~Account no longer exceeds an amount equal to 50 percent of the~~
24 ~~employer assets, other than the assets in the Taxpayer Adverse~~
25 ~~Risk Prevention Account.~~

26 ~~SECTION 1. Section 20814.5 is added to the Government Code,~~
27 ~~to read:~~

28 ~~20814.5. (a) For the purposes of this section, the following~~
29 ~~definitions apply:~~

30 ~~(1) "Employer contribution rate" means a rate for payment of~~
31 ~~the total employer contribution, as determined by the actuary~~
32 ~~according to the most recently completed valuation of the total~~
33 ~~liability for the benefits on the account of the employees of the~~
34 ~~employer.~~

35 ~~(2) "Employer normal cost of benefits" means a rate for~~
36 ~~payment of normal cost of benefits, as determined by the actuary~~
37 ~~according to the most recently completed valuation less the~~
38 ~~employee contribution rate.~~

39 ~~(b) Notwithstanding any other provision of law, the employer~~
40 ~~contribution rate shall be adjusted according to the following:~~

1 (1) If the employer contribution rate, as determined by the
2 actuary, is greater than the employer normal cost of benefits, then
3 the employer shall remit an amount, not less than the employer
4 normal cost of benefits that is, and sufficient as determined by the
5 actuary, when combined with assets transferred from the Taxpayer
6 Adverse Risk Prevention Account established pursuant to
7 subdivision (c), to equal the employer contribution rate.

8 (2) Except as provided in subdivision (d), if the employer
9 contribution rate is less than the employer normal cost of benefits,
10 the employer shall remit the employer contribution rate amount
11 and make an additional contribution equal to the difference
12 between the employer contribution rate and the employer normal
13 cost of benefits. That additional contribution amount shall be
14 credited to the employer's Taxpayer Adverse Risk Prevention
15 Account.

16 (c) For the purposes of subdivision (b), a separate account shall
17 be established for each employer in the retirement fund to be known
18 as a Taxpayer Adverse Risk Prevention Account.

19 (1) A Taxpayer Adverse Risk Prevention Account is an employer
20 asset, but shall not be counted as part of employer assets for
21 purposes of determining the employer contribution rate.

22 (2) Deposits to a Taxpayer Adverse Risk Prevention Account
23 shall be made when the actuarial value of assets exceeds the
24 accrued liability as determined by the chief actuary, according to
25 the most recently completed annual valuation.

26 (3) A Taxpayer Adverse Risk Prevention Account shall be drawn
27 from to pay for that portion of the employer contribution rate that
28 exceeds the employer normal cost of benefits, pursuant to
29 paragraph (1) of subdivision (b).

30 (4) The funds in a Taxpayer Adverse Risk Prevention Account
31 may be used to make asset transfers pursuant to Section 20816.

32 (5) The funds in Taxpayer Adverse Risk Prevention Accounts
33 shall be invested according to investment strategies established
34 by the board.

35 (d) Notwithstanding paragraph (2) of subdivision (b), when an
36 employer's Taxpayer Adverse Risk Prevention Account exceeds
37 an amount equal to 50 percent of the employer assets, other than
38 the assets in the Taxpayer Adverse Risk Prevention Account, that
39 employer is not required to make an additional contribution as
40 specified in paragraph (2) of subdivision (b).

1 ~~(e) Nothing in this section shall be construed to interfere with~~
2 ~~a public retirement board's authority and fiduciary responsibility~~
3 ~~as set forth in Section 17 of Article XVI of the California~~
4 ~~Constitution. If, and to the extent that, the board of a public~~
5 ~~retirement system determines that the receipt of any additional~~
6 ~~contributions required under this section would conflict with its~~
7 ~~fiduciary responsibility set forth in Section 17 of Article XVI of~~
8 ~~the California Constitution, the board may refuse to receive those~~
9 ~~contributions.~~

10 ~~SEC. 3.~~

11 SEC. 2. Section 20816 of the Government Code is amended
12 to read:

13 20816. (a) Notwithstanding any other provision of this part,
14 all assets of an employer, other than the assets in a Taxpayer
15 Adverse Risk Prevention Account established pursuant to Section
16 20814.5, shall be used in the determination of the employer
17 contribution rate for the membership comprising the basis of the
18 computation. Assets held shall be recognized over the same funding
19 period used to amortize unfunded accrued actuarial obligations,
20 whether in excess of the accrued actuarial obligation or not, using
21 the entry age normal funding method.

22 (b) On and after January 1, 1999, contracting agencies for which
23 the actuarial value of assets exceeds the present value of benefits
24 as of the most recently completed valuation, as determined by the
25 chief actuary, may request that the board transfer employer assets
26 to member-accumulated contribution accounts to satisfy all or a
27 portion of the member contributions required by this part. That
28 transfer shall be over a 12-month period provided the actuarial
29 value of assets exceeds the present value of benefits. In determining
30 the present value of benefits and the actuarial value of assets for
31 purposes of this part, liabilities and assets attributed to the 1959
32 survivor allowance may not be included. On and after January 1,
33 2003, a transfer of assets may not be made pursuant to this
34 subdivision unless all or the same portion of the member
35 contributions of each member in a membership classification are
36 satisfied through the transfer. An employer electing a transfer of
37 assets pursuant to this subdivision shall satisfy the members'
38 contributions for a period of not less than one month and not more
39 than one year.

(c) On and after January 1, 2002, any contracting agency for which the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, as determined by the chief actuary, may request that the board transfer from the contracting agency's employer account excess assets, as determined by the board subject to the requirements and limitations of Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), to a retiree health account established by the board, in its discretion, in the contracting agency's employer account pursuant to Section 401(h) of the Internal Revenue Code (26 U.S.C. 401(h)) for the purpose of providing health benefits to the contracting agency's retirees and their covered dependents. The board may, in its discretion, transfer excess assets from the contracting agency's employer account to that contracting agency's retiree health account within that agency's employer account, if the transfer meets the conditions of a qualified transfer pursuant to Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420). The transferred assets shall be used solely for the payment of current retiree health liabilities. That qualified transfer shall be made only once each year. The board may adopt regulations necessary to implement this subdivision. Notwithstanding any other provision of law, the regulations may provide for the nonforfeiture of accrued pension benefits of participants and beneficiaries of a plan from which excess assets are transferred to the extent necessary for the transfer to meet the conditions of a qualified transfer pursuant to Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), and may include any other provision necessary under Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420) or Section 401(h) of the Internal Revenue Code (26 U.S.C. Sec. 401(h)) to accomplish the purposes of this subdivision.

(d) On and after January 1, 2006, a transfer of assets may be made pursuant to this section and *on and after January 1, 2013, a transfer of assets may be made pursuant to Section 20814.5.*

(e) For the purpose of this section, "employer" means any contracting agency, the state, or a school employer.

(f) The actuarial report in the annual financial report shall also express the effect upon employer contribution rates of this section and of the recognition of net unrealized gains and losses.

~~SEC. 4. Section 31453.7 is added to the Government Code, to read:~~

1 ~~31453.7. (a) For the purposes of this section, the following~~
2 ~~definitions apply:~~

3 ~~(1) “Actual employer contribution rate” means the actual rate~~
4 ~~to be paid by the employer as a result of adjustments made to the~~
5 ~~employer contribution rate by the actuary as provided in this~~
6 ~~section.~~

7 ~~(2) “Employer” means the applicable county or district.~~

8 ~~(3) “Employer contribution rate” means a rate for payment of~~
9 ~~the total employer contribution, as determined by the system’s~~
10 ~~actuary according to the most recently completed valuation of the~~
11 ~~total liability for the benefits on the account of the employees of~~
12 ~~the employer.~~

13 ~~(4) “Normal cost of benefits” means a rate for payment of~~
14 ~~normal cost, as determined by the system’s actuary according to~~
15 ~~the most recently completed valuation.~~

16 ~~(b) Notwithstanding any other provision of law, the employer~~
17 ~~contribution rate of the county or district shall be adjusted~~
18 ~~according to the following:~~

19 ~~(1) If the employer contribution rate is greater than the normal~~
20 ~~cost of benefits, then the actual employer contribution rate shall~~
21 ~~be a rate, not less than the normal cost of benefits, and sufficient,~~
22 ~~when combined with assets transferred from the Taxpayer Adverse~~
23 ~~Risk Prevention Account established pursuant to subdivision (c),~~
24 ~~to equal the employer contribution rate.~~

25 ~~(2) Except as provided in subdivision (d), if the employer~~
26 ~~contribution rate is less than the normal cost of benefits, the actual~~
27 ~~employer contribution rate shall be equal to the normal cost of~~
28 ~~benefits.~~

29 ~~(c) For the purposes of subdivision (b), a separate account shall~~
30 ~~be established for each employer in the retirement system to be~~
31 ~~known as an Taxpayer Adverse Risk Prevention Account.~~

32 ~~(1) A Taxpayer Adverse Risk Prevention Account is an~~
33 ~~employer asset, but shall not be counted as part of employer assets~~
34 ~~for purposes of determining the employer contribution rate.~~

35 ~~(2) Deposits to a Taxpayer Adverse Risk Prevention Account~~
36 ~~shall be made with all or a portion of the actual employer~~
37 ~~contribution rate in excess of the employer contribution rate when~~
38 ~~the actuarial value of assets exceed the present value of benefits~~
39 ~~as determined by the system’s actuary, according to the most~~
40 ~~recently completed annual valuation.~~

~~(3) A Taxpayer Adverse Risk Prevention Account shall be drawn from to pay for that portion of the employer contribution rate that exceeds the actual employer contribution rate, pursuant to paragraph (1) of subdivision (b).~~

~~(4) The funds in a Taxpayer Adverse Risk Prevention Account may be used to pay for employee contributions picked up by an employer pursuant to Section 414(h)(2) of the Internal Revenue Code (26 U.S.C. Sec. 414).~~

~~(5) The funds in Taxpayer Adverse Risk Prevention Accounts shall be invested with other assets of the system.~~

~~(d) Notwithstanding paragraph (2) of subdivision (b), an actual employer contribution rate may be reduced below a rate equal to 100 percent of the normal cost of benefits, as specified in paragraph (2) of subdivision (b), pursuant to a formula determined by the system's actuary when that employer's Taxpayer Adverse Risk Prevention Account exceeds an amount equal to 50 percent of the employer assets, other than the assets in the Taxpayer Adverse Risk Prevention Account. That reduction in the actual employer contribution rate shall be reevaluated annually by the system's actuary. The actual employer contribution rate may be increased when the excess of funds in the employer's Taxpayer Adverse Risk Prevention Account no longer exceeds an amount equal to 50 percent of the employer assets, other than the assets in the Taxpayer Adverse Risk Prevention Account.~~

SEC. 3. Section 31453.7 is added to the Government Code, to read:

31453.7. (a) For the purposes of this section, the following definitions apply:

(1) "Employer" means the applicable county or district.

(2) "Employer contribution rate" means a rate for payment of the total employer contribution, as determined by the system's actuary according to the most recently completed valuation of the total liability for the benefits on the account of the employees of the employer.

(3) "Employer normal cost of benefits" means a rate for payment of normal cost of benefits, as determined by the system's actuary according to the most recently completed valuation, less the employee contribution.

1 (b) Notwithstanding any other provision of law, the employer
2 contribution rate of the county or district shall be adjusted
3 according to the following:

4 (1) If the employer contribution rate, as determined by the
5 actuary, is greater than the employer normal cost of benefits, then
6 the employer shall remit an amount, not less than the employer
7 normal cost of benefits that is sufficient as determined by the
8 actuary, when combined with assets transferred from the Taxpayer
9 Adverse Risk Prevention Account established pursuant to
10 subdivision (c), to equal the employer contribution rate.

11 (2) Except as provided in subdivision (d), if the employer
12 contribution rate is less than the normal cost of benefits, the
13 employer shall remit the employer contribution rate amount and
14 make an additional contribution equal to the difference between
15 the employer contribution rate and the employer normal cost of
16 benefits. That additional contribution amount shall be credited to
17 the employer's Taxpayer Adverse Risk Prevention Account.

18 (c) For the purposes of subdivision (b), a separate account shall
19 be established for each employer in the retirement system to be
20 known as a Taxpayer Adverse Risk Prevention Account.

21 (1) A Taxpayer Adverse Risk Prevention Account is an employer
22 asset, but shall not be counted as part of employer assets for
23 purposes of determining the employer contribution rate.

24 (2) Deposits to a Taxpayer Adverse Risk Prevention Account
25 shall be made when the actuarial value of assets exceeds the
26 accrued liability as determined by the system's actuary, according
27 to the most recently completed annual valuation.

28 (3) A Taxpayer Adverse Risk Prevention Account shall be drawn
29 from to pay for that portion of the employer contribution rate that
30 exceeds the employer normal cost of benefits, pursuant to
31 paragraph (1) of subdivision (b).

32 (4) The funds in Taxpayer Adverse Risk Prevention Accounts
33 shall be invested according to investment strategies established
34 by the board.

35 (d) Notwithstanding paragraph (2) of subdivision (b), when an
36 employer's Taxpayer Adverse Risk Prevention Account exceeds
37 an amount equal to 50 percent of the employer assets, other than
38 the assets in the Taxpayer Adverse Risk Prevention Account that
39 employer is not required to make an additional contribution as
40 specified in paragraph (2) of subdivision (b).

1 ~~(e) Nothing in this section shall be construed to interfere with~~
2 ~~a public retirement board's authority and fiduciary responsibility~~
3 ~~as set forth in Section 17 of Article XVI of the California~~
4 ~~Constitution. If, and to the extent that, the board of a public~~
5 ~~retirement system determines that the receipt of any additional~~
6 ~~contributions required under this section would conflict with its~~
7 ~~fiduciary responsibility set forth in Section 17 of Article XVI of~~
8 ~~the California Constitution, the board may refuse to receive those~~
9 ~~contributions.~~

10 ~~SEC. 5.~~

11 SEC. 4. This act shall become operative January 1, 2013.